



California Fair Political Practices Commission

December 28, 1989

Peter A. Bagatelos
Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-89-696

Dear Mr. Bagatelos:

This is in response to your request for confirmation of telephone advice regarding Section 84308 of the Political Reform Act (the "Act").^{1/} The Commission will not provide formal written advice to the representative of an official whose duties are in question under the Act unless the name of the official is provided.^{2/} (Section 83114(b); Regulation 18329(b)(2)(A), copy enclosed.)

This letter confirms that your letter dated December 14, 1989 accurately summarizes the telephone advice I provided to you on November 17, 1989. In our telephone conversation you asked two questions concerning the application of Section 84308 to an appointed planning commissioner who intends to run for city council. The first question was whether a secretary or clerk of a law firm was an agent of an applicant where one of the attorneys of the firm represented the party or participant in proceedings before the planning commission.

Regulation 18438.3 defines "agent" as follows:

(a) For purposes of Government Code Section 84308, a person is the "agent" of a party to, or a participant in, a proceeding involving a license,

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."

(b) To determine whether a contribution of \$250 or more has been made by a person or his or her agent, contributions made by that person within the preceding 12 months shall be aggregated with those made by his or her agent within the preceding 12 months or the period of the agency relationship, whichever is shorter.

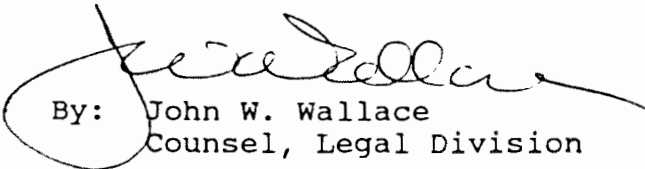
Thus, the contributions of an agent of a party or participant will be aggregated with the party or participant to determine if the dollar threshold in Section 84308 has been met. In addition, where the agent is an employee or member of a law, architectural, engineering or consulting firm, the firm's contributions will also be aggregated with those of the agent and the party or participant. However, individual contributions by employees of the firm, such as secretaries or clerks, will not be aggregated unless the firm reimburses the secretary or clerk.

Your second question involved the application of the restrictions and prohibitions of Section 84308 to an official once the official resigns. I informed you that Section 84308 applied only to persons on appointed boards, and once the official resigned from the board the restrictions were not applicable. However, I did caution that where the solicitation of a contribution occurred during the pendency of an application for a license, permit or entitlement for use, a violation would have occurred at the time of the solicitation even if the contribution was received after the resignation of the official. The resignation would not nullify the violation.

If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

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Enclosure

LAW OFFICES OF
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December 14, 1989

Mr. John Wallace
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95814

Re: Government Code Section 84308

Dear John:

This will confirm our telephone conversation on November 17, 1989. At that time, I advised you that I am representing a municipal appointed planning commissioner who intends to run for the City council. The commissioner is concerned about the application of Government Code Section 84308 to her fund raising efforts. We generally discussed the interpretation and application of Section 84308. You indicated that it is a very complicated code section to understand.

Generally, Section 84308 prohibits public officers from soliciting, accepting, or directing campaign contributions of \$250.00 or more from any party, participant, or agent of a party or participant, while a proceeding is pending before the officer's agency and for three months following the decision. A party or participant and his or her agent cannot make a campaign contribution of \$250.00 or more to an officer during the pendency of the preceding and for three months following a decision. An official who discovers that a party or participant has made a contribution of \$250 or more within 12 months prior to a decision, must disqualify himself, or return the prohibited amount within 30 days after learning of the contribution and the proceeding. I would like to confirm some specific advice that you provided in interpreting these provisions.

(1) Who is considered an agent under Section 84308?

You advised me that an agent is an individual or firm who represents a party or participant in a proceeding. Where the individual agent is an employee or member of a law, architectural, engineering, or consulting firm, or similar entity, both the firm or entity and the individual are considered agents. Campaign contributions of a party or participant must be aggregated with those of an agent for purposes of the statute.

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You clarified for me that an agent does not include clerks or other members of a firm who are not directly representing the party participant in a proceeding, even though those other parties may assist the "agent" who represents a party or participant. For example, an attorney that actually appears at planning commission meetings has a secretary who makes a contribution to a planning commissioner. The secretary would not be considered an agent of the party or participant. The secretary would be considered an agent if the firm were to reimburse her for the contribution. In brief summary, you advised me that contributions of a firm, entity, or corporation must only be aggregated with contributions of the actual individual(s) representing a party or participant in a proceeding, but not other persons who give individually within such firms, entities, or corporations, unless those persons are also reimbursed by the employer or principal. You provided me with a copy of an Internal FPPC memorandum, dated February 14, 1983, from Janis McLean, regarding telephone advice given to Dick Burt, wherein Ms. McLean stated:

If an attorney who is an agent for an applicant gives a contribution, it will be aggregated with any contributions given by the attorney's firm. The contribution will not be aggregated with contributions by other firm members, unless the other contributions were reimbursed by the firm.

You indicated that this memorandum supports the interpretation described above.

(2) Assuming that possible conflicts on Section 84308 exist, do such conflicts survive the resignation of a public official?

If a public official were to have a conflict under Section 83408, which would preclude accepting any contribution of \$250 or more, and the official resigns the position, is the official still prohibited from accepting any contributions after the resignation, and especially during the three month period after the resignation?

You advised me that if a person resigns under such circumstances, then the twelve month and three month rules would not apply. Contributions could be received from persons who would otherwise have created a conflict of interest if the person had remained on the public board and participated in a decision affecting such person. Since the purpose of the statute is to have public officials avoid making decisions on matters in which they have a conflict of interest, the conflict does not persist if the person removes himself or herself from any decision making responsibility through resignation. You did, however, indicate that there still could be a continuing

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problem if the person solicited contributions prior to resignation and during the pendency of the proceedings. This is a violation of the statute that would not be eclipsed by a resignation.

You cited, in support of your advice, a letter to David McMurtry, dated December 21, 1984 (A-84-296). The letter implies that officials who choose to resign from public bodies are not covered by section 84308 under the circumstances described above in this letter.

Thank you very much for your assistance and advice. Please advise me if there is any further clarifications that must be made to the contents of this letter.

Very truly yours,


Peter A. Bagatelos

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California Fair Political Practices Commission

December 20, 1989

Peter A. Bagatelos
Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Letter No. 89-696

Dear Mr. Bagatelos:

Your letter requesting advice under the Political Reform Act was received on December 18, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh